Supreme Court, U.S.
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Case Number: _____

# In The Supreme Court Of The United States

2004 Term

John Corbett McCombs,
Petitioner,

v.

V. Frank Desguin, as Charlotte County Property Appraiser, et al.,
Respondents,

**On Petition For A Writ Of Certiorari To The District Court of Appeals, Second District of Florida**
Case No.: 2D03-1316

## Petition For Writ of Certiorari

Filed by:

John Corbett McCombs *
c/o non-domestic
1215 Clearview Drive; near:
Port Charlotte, Florida [33953-2605]
Phone: (941) 627-6859

* Without agent or representative

# Questions Presented For Review

This Petitioner's God-given, Constitutionally secured rights have been improperly disfranchised by the State of Florida, including many of the States branches and public officeholders. Without authority Respondents, et al., have denied one of "The People" domiciled within Florida's borders, a Florida state Citizen, the secured rights pursuant to the Constitution of the United States of America (C.U.S.A.), the Florida Constitution (F.C.), and pertinent supreme law as set forth by the United States Supreme Court ruling clarifying such law regarding the following:

C.U.S.A.: Article I, Sec. 10, prohibited laws; Article VI, clause 2, as to the supremacy clause on treaties made by the United States and Acts of Congress, and rights that spring there-from; Amendment XIV, Sec. 1, as to due process of law and equal protection of law; including but not limited to Title 42 U.S.C. Sections 1982 and 1983, and Amendment X; as such affects the rights and remedies of this Petitioner, and

F.C.: Article I, Sec. 1, political power and rights of the people; Article I, Sec. 2, inalienable rights of the people, Florida state Citizens; Article I, Sec. 5, right to redress of grievance; Article I, Sec. 9, right to due process of law; Article I, Sec. 10, prohibited laws; Article I, Sec. 21, right to access to the courts; Article I, Sec. 22, right to trial by jury; Article II Sec. 3, separation of powers; Article II Sec. 8, the right...against official abuse; Florida Statutes 2.01 and 6.01; "pro se" Petitioner was not afforded the opportunity to be heard and present supporting evidence in an evidentiary hearing, or trial, in violation of the principles of law stated in Haines v. Kerner, 404 U.S. 519 (1972).

By what authority were the aforementioned rights of Petitioner denied and disfranchised with respect to the declaratory judgment Petitioner sought?

# List Of Parties

[ ] All parties appear in the caption of the case on the cover page.

[ X ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner John Corbett McCombs
c/o non-domestic
1215 Clearview Drive; near:
Port Charlotte, Florida [33953-2605]

Respondents: V. Frank Desguin, Property Appraiser
of Charlotte County, Florida; through Agent:
John L. Polk, Esq.
P. O. Box 511221
Punta Gorda, FL. 33951

Vickie Potts, Tax Collector of Charlotte
County; through Agent:
Phillip Jones, Esq.
18501 Murdock Circle, Sixth Floor
Port Charlotte, FL. 33948

Board of Commissioners of Charlotte County,
Florida, through Agent: Janette S. Knowlton,
Assistant Charlotte County Attorney,
18500 Murdock Circle
Port Charlotte, FL. 33948

(Respondent Parties Continued)

Jim Zingale, Executive Director
Department of Revenue of the
State of Florida; through Agent:
Mark T. Aliff, Assistant Attorney General
of the State of Florida,
PL 01, The Capitol
Tallahassee, FL. 32399-0150

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# In the Supreme Court Of The United States On Petition For Writ Of Certiorari

Petitioner respectfully requests that a writ of certiorari be issued to review the judgment below.

## OPINIONS BELOW

[ X ] For cases from state courts:

The opinion of the highest state court not to review the merits appears at Appendix D to the petition and is

[ X ] reported at 2D03-1316; or
[ ] has been designated for publication but is not yet reported; or
[ ] is unpublished.

The opinion of the 20th Judicial Circuit court appears at Appendix E to the petition and is

[ X ] reported at: 02-737-CA; or
[ ] has been designated for publication but is not yet reported; or
[ ] is unpublished.

# Jurisdiction

[ X ] for cases from **state courts:**

The date on which the highest state court decided my case was March 1st, 2004.
A copy of that decision appears at Appendix A.

[ ] a timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying the rehearing appears at Appendix _____.

An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____ (date) an Application Number _____.

The jurisdiction of this Court is invoked under 28 U.S.C. section 1257 (a).

This petition contains federal question(s).

Additionally, this Court has jurisdiction to review this action in that the Petitioner's appeal was denied by the Second District Court of Appeals of Florida ruling "PER CURIAM AFFIRMED" without opinion, making the second District Court of Appeals the court of last resort in Florida State pursuant to the Florida Constitution, Article V, Section 3(b), in that there is no provision therein for review in the Supreme Court of Florida.

## Constitutional And Statutory Provisions Involved

United States Constitution, Article I, Section 10:

No State shall enter into any Treaty, Alliance, or Confederation; and... pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts...

United States Constitution, Article VI, clause 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

United States Constitution, 10th amendment:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

United States Constitution, 14th amendment:

Sec.1.... nor shall any State.... deny to any [Citizen] within its jurisdiction the equal protection of the laws.

Florida Constitution (1968);

Article I:

Section 1. - All political power is inherent in the people. The enumeration herein of certain rights shall not be construed to deny or impair others retained by the people.

Section 2. - All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property;...

Section 5. - The people shall have the right peaceably to ... petition for redress of grievances.

Section 9. - No person shall be deprived of life, liberty or property without due process of law...

Section 10. - Prohibited laws. No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be passed.

Section 12. - The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures ... shall not be violated.

Section 17. - Excessive fines, cruel or unusual punishment, attainder, forfeiture of estate, indefinite imprisonment, and unreasonable detention of witnesses are forbidden.

Section 21. - The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.

Section 22. - The right of trial by jury shall be secure to all and remain inviolate. The qualifications and the number of jurors, not fewer than six, shall be fixed by law.

Section 23. - Every natural person has the right to be let alone and free from government intrusion into the persons private life except as otherwise provided herein.

Article II:

Section 3. - The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers

appertaining to either of the other branches unless expressly provided herein.

Section 8. - Ethics in government. A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse. ...

(d) Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

Article X:

Section 13. – Sovereign immunity.

Florida Statutes:

2.01- Common law and certain statutes declared in force.-the Common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the 4th day of July, 1776, or declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the Constitution and laws of the United States and the acts of the Legislature of this state.

6.01- Assent to terms of admission into the union. The State of Florida assents as by the statute approved July 25, 1845, to the terms of admission of this state into the Confederacy and Union of the United States, and to the provisions of the Acts of Congress respecting the public lands of the United States in this state.

## Statement of the Case

This petition arises in relation to error originating in the trial court "Order Granting Motion to Dismiss" with prejudice, rendered February 7, 2003, the Petitioner's trial court cause involves injury to the Petitioner, breach of Constitution(s) and conflict of laws; between particular Florida State "laws", rules, and Statutes –versus- the organic and amended Constitution of Florida, Federal questions regarding the Constitution of the United States of America, the organic Treaty of Florida, Acts of Congress, and many cited United States Supreme Court decisions as the Supreme Law of the Land. The Petitioner hereby invokes his reserved God-given rights pursuant to the 1838 organic, in particular Art. I, Secs.1, 26 & 27, and amended Florida Constitution(s).

The three particular judges representing the State of Florida's Second District Court of Appeal failed to act consistent with their duty under the Florida Constitution and (Federal question) the Constitution of the United States of America and instead, on October 1, 2003, rendered a "PER CURIAM AFFIRMED" decision without opinion.

On November 14, 2003, such court dismissed Petitioner's Motion for Rehearing as untimely. Said ruling is inconsistent with the Florida Rules of Court with respect to untimeliness, and said court failed to follow the standards of appellate review, noticed to such court (as herein cited) with respect to declaratory judgments, Florida Statutes Chapter 86.

Also, said judges of said court violated their loyalty oaths by denying Petitioner, one of the sovereign people of Florida, a Florida state Citizen, his constitutionally secured

inviolate rights, namely: to be heard by trial by jury in judicial proceeding pursuant to Florida Statutes Chapter 86.

The Second District Court of Appeal, by rendering "PER CURIAM AFFIRMED" without opinion, is the court of last resort in the State pursuant to the Florida Constitution (1968) Article V, Section 3(b), in that there is no provision therein for review to the Florida Supreme Court subsequent to such ruling.

The trial court erred in its failure to take judicial notice pursuant to Florida Statutes 90.201-.202 of the Federal question regarding the Supreme Court of United States of America's decisions relating to: conflicts between Treaty law and the State laws, see Ware v. Hylton, 3 U.S. 199 (1796) and 74 Am.Jur. 2d Secs.15-36; rights that spring from a Treaty and are bound by said Treaty, see U.S. v. Schooner Peggy, 1 Cranch 103 (1801), Treaty of Amity, Settlement, and Limits (T.A.S.L.); Acts of Congress with respect to the disposition of public lands, Swamp and Overflowed Lands Act of 1850 (S.O.L.A.); the Supreme Law of the Land; Constitutional prohibitions with respect to the States; Congressional pre-emption; cognizance of the court's primary duty to protect the God-given inalienable rights of the Citizen- "Obsta Principiis", see Boyd v. U.S., 116 U.S. 616 (1886), and in the judges' failure to adhere to loyalty oaths taken by such judges.

The trial court erred by focusing on the irrelevant and immaterial issues raised by the Respondents while excluding and ignoring Petitioner's bona fide issues; unconstitutionality of certain Florida Statutes; and breach of contract of said Respondents pursuant to Abruzzo v. Haller, 603 So.2d 1338 (Fla. App. 1 Dist. 1992) and Peregood v. Cosmides, 663

So.2d 991 (Fla. App. 5 Dist. 1995); both of which have caused injury to the Petitioner, and said issues are yet to be heard, in an evidentiary hearing or trial, determined, and declared in law by declaratory judgment.

The trial court erred by allowing the Senior Assistant Attorney General to enter papers in the judicial proceeding where he is only allowed by the cited case law, to be "heard." The Attorney General erred as there is no statutory duty imposed upon him to defend all constitutionally challenged statutes, as such raises a Federal question, pursuant to Mallory v. Harkness, 923 F. Supp. 1546 (S.D. Fla. 1996).

The error of the trial court was continued and compounded by the error of the Second District Court of Appeal, in that both failed to follow the standards of appellate review with respect to declaratory judgments: "test of the sufficiency of the complaint," R.C.B.S. v. Atlantic Beach, 178 So.2d 906 (Fla. App. 1 Dist. 1965), "essential elements of a proceeding for declaratory judgment", Platte v. General Development Corp., 122 So.2d 48 (Fla. App. 2 Dist. 1960), "The decree of the lower court left the *Petitioner* entirely in the dark as to the grounds upon which the bill was dismissed... the parties have a right to know the reasons which motivated the action of the courts.", May v. Holly, 59 So.2d 636 (Fla.1952), "To extent law violates express or clearly implied mandates of Constitution, law must fall, not merely because courts so decide, but because Constitution is authority superior to both legislature and judiciary.", State, Dept.of Ed. v. Glasser, 622 So.2d 1003 [10-12] (Fla. App. 2 Dist. 1992); and "Complaints...involving parties' respective claims to ownership of same land to some extent, made case for declaratory judgment...because of expressed doubt of

plaintiffs regarding their rights under deeds.", Trustees of the Florida Internal Improvement Fund v. Pineta, 282 So.2d 126 (Fla. App. 3 Dist. 1973).

An appeal to the Twentieth Judicial Circuit Court in and for Charlotte County, Florida, was made from the denial of the Charlotte County Value Adjustment Board, where the Petitioner's Constitutionally secured rights were also alienated and State of Florida Statutes were held to be the "Supreme Law of Charlotte County", raising a Federal question, as is apparent from a review of the "Special Masters Exemption/ Recommendation", see Appendix F, which was adopted by the Value Adjustment Board. Said VAB denial constitutes full exhaustion of Petitioner's administrative remedy.

All of the Judges involved and all the Respondents appear to be acting in concert to protect the State of Florida's putative property taxation police powers, presumed, by Florida's courts, to be superior to Petitioner's right to true property ownership, even to the extent that they are willing to violate their sworn oaths and primary duty to the Constitution(s) to protect the indefeasible rights of "the people."

This first impression "pro se" petition for writ of certiorari is sought on the error of the appeals court affirming, without opinion, the lower courts "Order Granting Motion to Dismiss" with prejudice, as a gross abuse of discretion, as an unwarranted extreme sanction, as a failure to act consistent with the standards of appellate review with respect to declaratory judgments, and in violation of the Petitioner's inalienable constitutionally secured, and reserved, rights as one of the people, acting in his sovereign capacity

known as a Florida state Citizen, pursuant to Furst v. Blackman, 744 So.2d 1222 (Fla. App 4 Dist. 1999), and Boynton v. State, 64 So.2d 536, 554 (Fla. 1953).

This Court should note that Petitioner's cause is a case of first impression since there is no comparable Florida case law: on the issue of Treaty law being paramount to State law; on the issue of Acts of Congress being paramount to State law; on the issue of Congressional pre-emption being paramount to State law; on the issue of Petitioner's indefeasible ownership of said patented lands, whereby homestead property secured by perfected consummate legal title, is excluded from any/all subsequent acts of Florida's legislature, cannot be collaterally attacked, and "forever" cannot be taken by the State, et al.; and on the issue of true property ownership connected by and pursuant to the organic Treaty, letters patent, #7, issued by the United States of America, Deed #11844 issued by Florida state, and through abstract-chain of deeds or titles, to one of "The People", acting in his sovereign capacity, known as a Florida state Citizen, which is very similar in nature to the decisions stated in Chisholm v. Georgia, 2 U.S. 419, 453-479 (1793), Gibbons v. Ogden, 22 U.S. 1, 210-211 (1824) and Summa Corp. v. California, 466 U.S. 198, 200-209 (1984).

This cause is similar to Summa, id., in that, although The State of Florida was granted the Land by Patent #7, it was thereby held in trust for the public until acquired by the first purchaser of a portion, or all, of said land. This first purchaser of the Land in question was Hamilton Disston. Disston acquired the said Land by contract known as Deed No. 11844, whereby Disston, Disston's agents, heirs and assigns, forever, have held title to said lands in "absolute, indefeasible estate in fee simple". Disston, was the first

intended beneficiary as holder in due course according to the terms and intention of the king of Spain, by the Treaty of Amity, Settlement and Limits. The State of Florida in Deed No. 11844, makes no reservation of rights whatsoever, which is similar with respect to the State of California's want of reservation of rights in Summa, id. Disston, Disston's agents, heirs and assigns forever are then, by said 1883 contract, "absolute, indefeasible" owners of said Land, which cannot be impaired by any subsequent, 1891, "laws" passed by legislative fiat, as such "laws" are impairments of the obligation of the State's own contract, and repugnant to both F.C. and C.U.S.A., Article I section 10. See Marbury v. Madison, 5 U.S. 137 (1803). Petitioner hereby makes his claim to said rights as an "assigns, forever," to the rights granted by said contract to Disston, and stands in his shoes.

The Petitioner's cause is a matter of great public importance as Petitioner challenges the constitutionality of the Florida Legislatures' authority to pass repugnant "laws" which impair the obligation of one of Florida's own contracts, specifically prohibited by Article 1 section 10 of both Florida's and the U.S. Constitutions, whereby the Florida Legislature is specifically prohibited from passing any "ex post facto law" which also impairs the obligation of contract, specifically when a "creature of the State", Florida's Trustees of the Internal Improvement Fund, created and signed said contract; ie. Deed No. 11844, signed by Florida Governor Bloxham, and several of his cabinet members on March 5, 1883. See Appendix L., and take judicial notice that, "...the power of one Legislature is no greater than another. Where the power of the subsequent one is limited, it results from the fact that the act of the first is of such character that the organic law renders it inviolable through constitutional limitations covering the subject.", Kittel v.

Trustees of the Internal Improvement Fund, 139 Fed. Rep. 941, 952 (C.C. N.D. Fla. 1905). Said contract specifically provides that the Trustees of the Internal Improvement Fund's authority is through the Act of Congress of September 28, 1850, "The Swamp and Overflowed Lands Act", see Appendix I., and agrees "to sell and convey by good and sufficient deeds, conveyances, and assurances... ... have granted, bargained and sold, and by these presents do grant, bargain, sell and convey..."an absolute, indefeasible estate in fee simple"... to Hamilton Disston, his agents, heirs, and assigns forever." Petitioner, as an "assign", claims his reserved rights to true ownership, homestead, and pre-emption, which cannot be collaterally attacked by the State of Florida at any time for any reason, pursuant to C.U.S.A. Amendment 10, Wilcox v. Jackson, 13 U.S. 498 (1839), Broward v. Mabry, 50 So. 826 (Fla. 1909), United States v. Arredondo, 6 Peters 691 (1832), and Sanders v. Alford Bros. Co., 111 So. 278 (Fla. 1926).

The Petitioner's cause is a matter of great public importance as the Petitioner challenges the authority of the State of Florida, its branches, its public office-holders, and its political subdivisions, to repeal, or to ignore/pretend to have repealed, Florida Statute 6.01, whereby the territory of Florida assented to the Acts of Congress with respect to the disposition of public lands in order to become a State in the Union of States. Quo Warranto?

The Respondents have continually requested the courts to sanction Petitioner for attorney fees, and the Petitioner repeatedly has responded that the Petitioner is simply exercising his right to have his rights, pursuant to said contracts, determined and declared and to ultimately stop the adverse parties from continuing to economically injure

Petitioner and usurp Petitioner's property ownership rights, et al.

The Petitioner seeks to have this Court declare that Petitioner's God-given rights cannot be threatened or chilled, pursuant to the principle of law stated in Sherar v. Cullen, 481 F.2d 945 (9th Cir. 1973), by Respondent's continuing threats for the court to award attorney fees to Respondents.

For the above reasons setting forth foundation that the Petitioner's cause of action and issues contained therein have not been heard in an evidentiary hearing, or trial, Petitioner's "Amended Petition for Declaratory Judgment" was improperly dismissed with prejudice by the trial court, as a gross abuse of discretion, without bona fide grounds for dismissal. Petitioner was, in fact, denied an appeal without opinion at the court of last resort in the State, without valid grounds or authority, and this petition for writ of certiorari should be granted as a matter of law, to prevent further injury by the travesty of justice imposed upon the Petitioner by the Respondents and Florida's courts, all of which were caused by persons holding offices of public trust in Florida, including the trial and district courts of appeal, which were all acting inconsistent with their oaths and duty, to both Constitution(s), and Laws of Florida.

# Reasons For Granting The Petition

The cause for this petition involves a matter of great public interest, namely, that Florida State office-holders are denying the reserved rights and remedies of the Petitioner as one of "The People", as one of the sovereign people, known as a Florida state Citizen, and said office holders are abandoning the Florida Constitution and laws, the United States Constitution and decisions of the United States Supreme Court, as law, without cause or reason, and are acting inconsistent with the essential requirements in law, and by judicial office-holders refusing to correct the error(s) of the trial court when such remedy is sought by Petitioner. The trial court acted in a manner repugnant to the Laws of Florida and the Florida Constitution. The trial court acted in a manner repugnant to the Florida case law cited as the standards of appellate review with respect to declaratory judgment actions, and the trial court misapplied a severe and extreme sanction, dismissal with prejudice, in direct conflict with, and as a gross abuse of discretion, repugnant to Scherar v. Cullen, 481 F.2d 945, 947 (9th Cir. 1973), where "pro se" Petitioner was simply seeking to have his rights under (contracts) treaty, patent, and deeds determined and declared.

The Supreme Court of Florida is without jurisdiction to review this case in that the Florida Constitution, Article V, Section 3, does not provide for such court to review the appellate court's "per curiam affirmed" ruling without an opinion. See Appendix A., Fla. Supreme Court, 3-1-2004.

The Petitioner has suffered continuous injury by the Respondent's acts and in Florida's courts for which this Court must intervene to stop the ongoing injury to Petitioner

and the stigma of the presumption that the Petitioner is a "delinquent property taxpayer", when in reality Petitioner does not consent, and is not liable for said tax, and therefore owes no tax at all, and as said land cannot be "taken" for any subsequent failure to make said de facto tax payment.

If this petition is not granted to stop the ongoing injury to the Petitioner who is one of the people, acting in his sovereign capacity, known as a Florida state Citizen with reserved rights secured and protected by the U.S.A. and Florida Constitutions, a travesty of justice will be allowed to remain that was perpetrated by office-holding persons/subjects that are State of Florida holders of public trust who have signed, sworn, and declared under oath that they would not act in such a manner against the written contracts, known as the Florida Constitution and the Constitution of the United States of America, between public office holders and the specifically designated beneficiaries, "The People".

## Conclusion

The Petitioner seeks to confirm in Florida's courts the opinions of the United States Supreme Court with respect to those issues raised by the Petitioner which have already been decided in the U.S. Supreme Court, but have not yet been accepted or decided in Florida's courts. The Petitioner's God-given rights cannot be alienated by the semi-sovereign State of Florida, pursuant to Chisholm, id., and the Declaration of Independence. The Petitioner seeks reversal of the trial and appeals court's rulings, at minimum, as mistakes, repugnant to both written Constitutions, and if this Court cannot, for whatever reason, rule on the merits of the Petitioner's cause of action; ie. that Petitioner's patented property is permanently excluded from taking, and taxation, by the State of Florida and its political subdivisions; then in the alternative, reverse and remand to speedily proceed in the Florida trial court, with Petitioner's cause advanced on the trial court's docket, for bona fide uninterrupted trial by jury, in a judicial court, in law, to resolve all of the issues raised by the Petitioner pursuant to F.S. Chapter 86, Florida's Declaratory Judgment Act, and Petitioner's Amended Petition for Declaratory Judgment.

Respectfully submitted,

John Corbett McCombs

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[33953-2605]

Date: May 20, 2004



BEST AVAILABLE COPY